IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7373 OF 2023

	Ravindra Reddy Katamreddy,	...PETITIONER
	Versus	
1.	Deputy Commissioner of Income Tax /Assistant Commissioner of Income Tax, Circle – Akola,	...RESPONDENTS
2.	Additional Commissioner of Income Tax / Joint Commissioner of Income Tax, Range – Akola.	
3.	The Principal Commissioner of Income Tax-1, Nagpur, Aayakar Bhawan, Civil Lines, Nagpur.	
4.	The Principal Chief Commissioner of Income Tax, Nagpur, Aayakar Bhawan, Civil Lines, Nagpur.	
5.	Assessment Unit, Income Tax Department, National Faceless Assessment Centre, N. Delhi.	
6.	The Union of India, through its Secretary, Government of India, New Delhi – 110 002.	
7.	Central Board of Direct Taxes, through Chairman, Ministry of Finance, North Block, New Delhi.	

Mr. Kapil A. Hirani, Advocate for the petitioner.
Mr. Anand Parchure, Advocate for respondent nos.1 to 7

CORAM : SMT. ANUJA PRABHUDESSAI, AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 13th DECEMBER, 2023.

P. C.

1. In this petition, which relates to assessment year 2016-17 the petitioner has raised a challenge to the notice dated 29.06.2021

issued by respondent no.1 under Section 148A(b), order dated 21.07.2022 issued by respondent no.1 under section 148A(d), notice dated 21.07.2022 under section 148 and the assessment order dated 27.05.2023 issued by respondent no.5 under section 147 r/w section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the I.T. Act') and further sought direction against the respondents to forebear from giving effect to and/or taking steps pursuant to the assessment order dated 27.05.2023 passed under Section 147 r/w section 144 B of the Act.

2. The challenge is essentially, on the ground that Section 148 notice which has been issued by respondent No.2 after the statutory period of four years, is not in the mandatory procedure prescribed under the Act. Learned counsel for the petitioner submits that the case is fully covered by the decisions of this Court at Principle Seat in Writ Petition No. 4888 of 2022 ***[Siemens Financial Services Pvt. Ltd. .vs. Deputy Commissioner of Income Tax and others***], decided on 25.08.2023 and in Writ Petition No.5102/2022 ***[Crompton Greaves Consumer Electrical Ltd. .vs. Assistant Commissioner of Income Tax and others]***, decided on 25.08.2023.

3. Learned counsel for the respondents submits that the respondents intends challenging the judgment in ***Siemens Financial Services Pvt. Ltd. .vs. Deputy Commissioner of Income Tax and others*** before the Apex Court. It is contended that notice dated 29.06.2021 under Section 148 of the Act issued as per the old provisions has been saved by the decision of the Apex Court in the case of ***Union of India and others Vs. Ashish Agrawal***, reported in ***(2023) 1 SCC 617*** holding that the same would be treated as show cause notice under Section 148 A (b) of the I.T. Act. It is contended that the notices are legal and valid and are issued by following due procedure under the Act. The respondent has also raised a plea of alternative efficacious remedy.

4. As regards the issue of alternative remedy, the coordinate Bench of this Court in ***Arvind Sahdeo Gupta vs. Income Tax Officer, Ward-1 and Ors.*** (W.P. No.4793 of 2021) has observed that if a jurisdictional issue is raised and the controversy is purely a legal one which does not involve any disputed question of fact, then the writ petition does not deserve to be thrown out threshold. The decision of the Apex Court in ***Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal*** reported in ***(2014) 1 SCC 603*** was distinguished by

observing that the challenge in the said case was to the order of assessment, whereas the challenge before the Court was to the notice under Section 148 of the IT Act against which no statutory remedy is available. In the instant case, the challenge raised by the petitioner, that reopening without prior approval of Commissioner of Income Tax, goes to the root of the matter and hence the petition cannot be thrown out on the ground of alternative remedy.

5. As regards the sanction, in ***Siemens Financial Services Pvt. Ltd. (supra)*** the Division Bench of this Court at the Principal Seat has held that the sanction ought to have been granted under Section 151 (ii) and not under Section 151(i) of the Act. Relying upon the said decision in ***Crompton Greaves Consumer Electrical Ltd.*** (Supra) which related to the assessment year 2016-17, the Division Bench of this Court has quashed order under Section 148 A (d) as well as notice under Section 148 of the IT Act, since the authority which sanctioned issuance of order under Section 148 A (d) was the one under Section 151(i) and not under Section 151 (ii) of the Act. The case in hand is squarely covered by the decision of ***Siemens Financial Services Pvt. Ltd. (supra).*** The decisions relied upon by learned counsel for the

respondents in support of the said contentions have already been considered by the Division Bench of this Court in the said decision.

6. Hence, without going into the other issues or grounds raised, the petition stands disposed of in view of the judgment in *Siemens Financial Services Pvt. Ltd. (supra).* The orders passed under Section 148(A)(d) as well as the notices issued under Section 148 of the I.T. Act are hereby quashed and set aside. No order as to costs.

[MRS.VRUSHALI V. JOSHI, J.] **[SMT. ANUJA PRABHUDESSAI J.]**